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8 Attorneys for ARS NATIONAL
9 SERVICES, INC., a California corporation

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 MICHAEL P. KOBY, an individual;
14 MICHAEL SIMMONS, an individual,
15 and JONATHAN W. SUPLER, an
16 individual; on behalf of themselves and
all others similarly situated,

17 Plaintiffs,

18 vs.
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20 ARS NATIONAL SERVICES, INC.,
21 a California corporation; JOHN AND
22 JANE DOES 1 through 25, inclusive,
23

Defendants.

CASE NO. 3:09-cv-00780-JAH (KSC)

**NOTICE OF FILING OF
CLASS ACTION SETTLEMENT
AGREEMENT**

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL P. KOBY, an individual;
MICHAEL SIMMONS, an individual;
JONATHAN W. SUPLER, an individual; on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

ARS NATIONAL SERVICES, INC., a
California Corporation; and JOHN AND JANE
DOES 1 through 25 inclusive,

Defendants.

Case 3:09-cv-00780-JAH-KSC

**CLASS ACTION
SETTLEMENT AGREEMENT**

12 This Settlement Agreement is between the Plaintiffs, Michael P. Koby, Michael
13 Simmons, and Jonathan W. Supler, and Defendant, ARS National Services, Inc., who agree as
14 follows:

15 **ARTICLE I. DEFINITIONS**

16 The following capitalized words have the designated meanings:

- 17 1. "ACTION" means the civil action described in the case caption, above.
18 2. "AGREEMENT" means this Class Action Settlement Agreement.
19 3. "SETTLEMENT CLASS" means all natural persons in the United States who received a
20 telephonic voicemail message (automated or otherwise) from DEFENDANT in
21 connection with an attempt to collect a debt, in which the message allegedly failed to
22 identify DEFENDANT as the caller, to state the purpose or nature of the call, or to
23 disclose that the call was from a debt collector, during the period April 15, 2008 (one
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1 year prior to the filing of this lawsuit) through August 19, 2011 (when DEFENDANT
2 adopted a standardized uniform message for calls made to consumers). DEFENDANT
3 estimates (and PLAINTIFFS do not dispute) that the class size is in excess of 4 million
4 persons. Excluded from the SETTLEMENT CLASS are all officers, members, partners,
5 managers, directors, and employees of DEFENDANT and their respective immediate
6 families, and legal counsel for all parties to this ACTION and all members of their
7 immediate families.

8 4. "CLASS CLAIMS" are defined as any and all claims and causes of action arising under
9 the FDCPA or any other federal or state law based upon DEFENDANT's failure, when
10 leaving a telephonic voicemail message (automated or otherwise) in connection with an
11 attempt to collect a debt, to identify DEFENDANT as the caller, to state the purpose or
12 nature of the call, to disclose that the call was from a debt collector, or to otherwise
13 comply with Sections 1692d(6) and/or 1692e(11) of the FDCPA, during the period April
14 15, 2008 (one year prior to the filing of this lawsuit) through August 19, 2011 (when
15 DEFENDANT adopted a standardized uniform message for calls made to consumers).
16 Based on the foregoing definition, CLASS CLAIMS do not include claims arising under
17 the Telecommunication Consumer Protection Act, 47 U.S.C. § 227.

18 5. "CLASS COUNSEL" means Philip D. Stern, Esq. of Philip D. Stern & Associates, LLC
19 and Robert E. Schroth, Jr., Esq. of Schroth & Schroth.

20 6. "CLASS MEMBERS" means those natural persons who are members of the
21 SETTLEMENT CLASS.

- 1 7. "CLASS PERIOD" means the uninterrupted period of time commencing one-year
2 immediately preceding the commencement of this ACTION (that is, April 15, 2008) up
3 through and including August 19, 2011.
- 4 8. "COMPLAINT" means the document filed in the ACTION on April 15, 2009.
- 5 9. "COURT" means the United States District Court for the Southern District of California
6 in which this ACTION is being heard.
- 7 10. "DEFENDANT" means ARS National Services, Inc., a corporation formed under the
8 laws of the State of California, and any of its predecessors, successors (including, without
9 limitation, acquirers of any of the assets, stock, or other ownership interests of
10 Defendant) and assigns; the past, present and future, direct and indirect, parents
11 (including, without limitation, holding companies), subsidiaries, affiliates and associates
12 of any of the above; and the past, present and future, direct and indirect, principals,
13 trustees, partners, officers, directors, employees, agents, attorneys, insurers, vendors,
14 shareholders, advisors, predecessors, successors (including, without limitation, acquirers
15 of any of the assets, stock, or other ownership interests of any of the above), assignors,
16 assignees, assigns, representatives, heirs, executors and administrators of any of the
17 above.
- 18 11. "EFFECTIVE DATE" means 14 days after the FINAL SETTLEMENT APPROVAL.
- 19 12. "FDCPA" means the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.
- 20 13. "FINAL APPROVAL ORDER" means an order entered by the COURT in the ACTION
21 finally approving this AGREEMENT and resolving all issues between the PARTIES,
22 substantially in the form attached hereto as Exhibit A.
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1 14. "FINAL FAIRNESS HEARING" means the hearing(s) at which the COURT will address
2 whether to approve the settlement provided for in this AGREEMENT, enter the
3 JUDGMENT and make such rulings as are contemplated by this AGREEMENT.

4 15. "FINAL SETTLEMENT APPROVAL" means the date the Final Approval Order and
5 Judgment becomes final for all purposes upon the occurrence of all of the following
6 events without the prior termination of the Agreement:

7 (i) the date of entry of the FINAL APPROVAL ORDER and the
8 JUDGMENT in all material respects in the form of Exhibit A hereto; and

9 (ii) either (a) the time to appeal, or to seek permission to appeal, the
10 COURT's approval of the AGREEMENT and entry of the FINAL APPROVAL ORDER has
11 expired with no appeal having been taken or permission to appeal having been sought; or (b)
12 such approval and final judgment have been affirmed in their entirety by the court of last resort
13 to which any appeal has been taken or petition for review has been presented, and such
14 affirmance has become no longer subject to the possibility of further appeal or review.

15 16. "PARTIES" means the PLAINTIFFS and DEFENDANT.

16 17. "PLAINTIFFS" means the individuals who are named in the COMPLAINT as plaintiffs.

17 **ARTICLE II. BACKGROUND**

18 18. On April 15, 2009, PLAINTIFFS filed the ACTION as a putative class action lawsuit
19 against DEFENDANT in the COURT alleging that DEFENDANT's telephonic
20 voicemail messages (automated and otherwise) violated the Fair Debt Collection
21 Practices Act ("FDCPA"), 15 U.S.C. §1692 *et seq.*, and, in particular, Sections 1692d(6)
22 and 1692e(11).
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- 1 19. On March 29, 2010, the COURT entered an Order (Dkt. 19) granting in part and denying
2 in part DEFENDANT's motion for judgment on the pleadings.
- 3 20. On December 23, 2010, the COURT entered an Order (Dkt. 42) granting
4 DEFENDANT's motion to certify the March 29, 2010 order for interlocutory appeal,
5 pursuant to 28 U.S.C. §1292(b).
- 6 21. On March 18, 2011, the Ninth Circuit Court of Appeals entered an Order (Dkt. 44)
7 denying the petition for leave to appeal.
- 8 22. DEFENDANT represents that, effective August 19, 2011, DEFENDANT, without any
9 admission of liability, adopted a single, uniform and consistent message for consumer
10 calls (attached here as Exhibit B). PLAINTIFFS do not contend that the revised message
11 violates the requirements of Sections 1692d(6) and 1692e(11) of the FDCPA.
- 12 23. The PARTIES acknowledge that no appellate court has decided the legal issues raised by
13 the COMPLAINT and that the result of any appeal on those issues and on any other issue
14 which could arise if this ACTION were contested is far from certain.
- 15 24. PLAINTIFFS recognize that there are risks from continued litigation including the risks
16 that a disputed class certification could be denied, that the evidence admitted at trial
17 would not satisfy the trier of fact, or that DEFENDANT could prove an affirmative
18 defense. Therefore, PLAINTIFFS and CLASS COUNSEL conclude that the further
19 conduct of this ACTION by them would be protracted and expensive, and that it is
20 desirable that the ACTION be fully, finally and forever settled on the terms set forth in
21 this AGREEMENT.
- 22 25. DEFENDANT also recognizes the risks and expense inherent in continued litigation, and,
23 with the advice of defense counsel, concludes that the further conduct of this ACTION by
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them would be protracted and expensive, and that it is desirable that the ACTION be fully, finally and forever settled on the terms set forth in this AGREEMENT.

DEFENDANT is therefore willing to enter into this AGREEMENT to avoid the further expense and inconvenience of litigation and to buy peace and resolve and settle all claims which have been made or could be made against it by PLAINTIFFS and the CLASS arising out of the alleged statutory violations.

26. PLAINTIFFS and DEFENDANT, along with their respective counsel, have engaged in both formal and informal discovery of the facts relevant to both the merits of PLAINTIFFS' claims and the factors under Fed. R. Civ. P. 23. The PARTIES have further conducted two full-day settlement conferences under the guidance of the COURT.

27. CLASS COUNSEL has considerable experience in handling class actions, consumer protection cases and complex litigation. On behalf of PLAINTIFFS, CLASS COUNSEL analyzed the facts and law relevant to the ACTION, recognizes the substantial expense and delay associated with the continued prosecution of this ACTION against DEFENDANT through trial and through appeals, as well as the risks associated with continued litigation and that protracted litigation could likely increase reasonable attorney's fees and litigation expenses without materially advancing the interests of either the PLAINTIFFS or the CLASS MEMBERS beyond the benefits of this AGREEMENT. Therefore, PLAINTIFFS believe that the settlement on the terms set forth in this AGREEMENT is fair, adequate, and reasonable, and thus in the best interest of the CLASS.

28. Based on extensive analysis by DEFENDANT's counsel of the law and facts at issue in this ACTION, and pursuant to the advice of DEFENDANT's counsel, DEFENDANT

believes that this settlement on the terms set forth in this AGREEMENT is fair, adequate, and reasonable.

29. Consequently, the PARTIES are desirous of entering into this AGREEMENT, mindful that it is subject to approval by the COURT pursuant to Fed. R. Civ. P. 23 and that, if not approved by the COURT, this AGREEMENT will be deemed as if the PARTIES had never entered into this AGREEMENT.

ARTICLE III. TERMS AND CONDITIONS OF SETTLEMENT

30. The PARTIES and their respective counsel agree to support this settlement, to undertake all reasonable actions to assure the reasonably prompt implementation and enforcement of its terms, and to take no action inconsistent with such support.

31. PLAINTIFFS will seek to certify the defined SETTLEMENT CLASS pursuant to Fed.R.Civ.P. 23(b)(2). Solely for purposes of avoiding the expense and inconvenience of further litigation, DEFENDANT does not oppose the certification for settlement purposes only of the SETTLEMENT CLASS, provided that neither such certification for settlement purposes only, nor any other act relating to the negotiation, execution or implementation of this AGREEMENT, shall be considered as a factor in connection with any class certification issue(s) if the AGREEMENT terminates, or if there is no JUDGMENT or FINAL APPROVAL ORDER.

32. DEFENDANT agrees to the entry of an injunction ("STIPULATED INJUNCTION"), to expire on its own terms no later than two years from the date of the FINAL APPROVAL ORDER and JUDGMENT, whereby DEFENDANT agrees to utilize a voicemail message for all consumer calls (automated and otherwise) identical or substantially similar to that attached here as Exhibit B; provided, however, that DEFENDANT may

1 seek to dissolve the STIPULATED INJUNCTION at any time if there is a change in the
2 law or circumstances otherwise present a basis for doing so. Further, DEFENDANT
3 does not waive and reserves the right to invoke the FDCPA's *bona fide* error defense in
4 response to any claim alleging that DEFENDANT left a non-compliant message during
5 the time the STIPULATED INJUNCTION remains in effect.

6 33. DEFENDANT agrees to pay, in the form of a *cy pres* award to a mutually acceptable
7 organization, the amount of \$35,000.00 (which the PARTIES agree is a fair
8 approximation of the maximum class statutory damages recoverable under Section
9 1692k(a)(2)(B) of the FDCPA). If requested by the COURT, Defendant will provide
10 documentation establishing its net worth for an *in camera* inspection. The PARTIES
11 agree to work in good faith to identify an appropriate recipient, consistent with
12 controlling case law. The PARTIES inability to agree on the recipient shall not be a
13 failure of a material term of this AGREEMENT; instead, the PARTIES will agree to any
14 procedure mandated by the COURT to determine the recipient.

15 34. The PARTIES agree that, notwithstanding this AGREEMENT, neither this
16 AGREEMENT, the FINAL SETTLEMENT APPROVAL, nor the JUDGMENT affects
17 the right, if any, of each CLASS MEMBER to assert, maintain or litigate any individual
18 claim for actual and/or statutory damages, attorney's fees, and costs under the FDCPA or
19 any other comparable federal or state law based upon having received a telephonic
20 voicemail message (automated or otherwise) from DEFENDANT during the CLASS
21 PERIOD, in connection with an attempt to collect a debt, in which the message allegedly
22 failed to identify DEFENDANT as the caller, to state the purpose or nature of the call, to
23 disclose that the call was from a debt collector, or to otherwise comply with
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1 Sections 1692d(6) and/or 1692e(11) of the FDCPA; provided, however, that the CLASS
2 MEMBERS shall be barred and enjoined from bringing, maintaining, prosecuting,
3 continuing or asserting such a claim under either federal or state law through a class
4 action or any other kind of mass action procedural device. DEFENDANT agrees that in
5 the event it seeks to assert this bar against any CLASS MEMBER, it shall first give
6 notice to CLASS COUNSEL and, further, shall not seek sanctions against or to hold the
7 CLASS MEMBER or the CLASS MEMBER'S attorney in contempt based on the
8 injunction described in this Paragraph; however, nothing in this Paragraph shall be
9 construed as prohibiting DEFENDANT from seeking any relief, including an
10 adjudication of contempt or sanctions, for any other reason.

11 35. The PARTIES agree that because they will seek to certify a settlement class pursuant to
12 Fed.R.Civ.P. 23(b)(2), no notice (of any kind) to the CLASS MEMBERS will be required
13 (except as provided in Paragraph 36). The PARTIES agree that the cost of notice would
14 be excessive (based on the estimated size of the class) and the per-class member recovery
15 *de minimus* (given the FDCPA's one-percent of net worth cap on class statutory
16 damages). Further, the CLASS MEMBERS retain the ability to bring individual claims
17 for actual and/or statutory damages, attorney's fees, and costs and, thus, are not releasing
18 any substantive or property right.

19 36. DEFENDANT shall timely serve the notice required under the Class Action Fairness Act,
20 28 U.S.C. § 1715(b) (the "CAFA notice"), on the "appropriate Federal official" and the
21 "appropriate State official" (as those terms are defined in 28 U.S.C. § 1715) in each of
22 the fifty States, and shall bear all expense associated therewith. The first page of the
23 CAFA notice shall, in bold text or other prominent form, state that the COURT'S
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1 approval of this AGREEMENT will result in the CLASS MEMBERS being barred and
2 enjoined from bringing, maintaining, prosecuting, continuing or asserting any of the
3 CLASS CLAIMS subject to this AGREEMENT, under either federal or state law,
4 through a class action or any other kind of mass action procedural device. At the same
5 time, DEFENDANT shall give notice to any CLASS MEMBER who has a pending
6 lawsuit asserting the same CLASS CLAIMS that are subject to this AGREEMENT.
7 DEFENDANT shall promptly provide a copy of such notice to CLASS COUNSEL.

8 37. DEFENDANT agrees to pay each of the PLAINTIFFS the sum of \$1,000.00 (for a total
9 of \$3,000.00) in satisfaction of their individual claims, including all claims for actual,
10 statutory, or punitive damages, injunctive or equitable relief.

11 38. DEFENDANT agrees to pay reasonable attorneys' fees and costs in the amount of
12 \$67,500.00 and agrees not to oppose CLASS COUNSEL'S fee petition in that amount.
13 DEFENDANT shall have no further responsibility or liability for attorneys' fees and
14 costs beyond this amount stated herein. CLASS COUNSEL will accept the amount of
15 fees and expenses awarded by the COURT in full satisfaction of reasonable attorney's
16 fees and costs and will neither assert a charging or retaining lien nor request additional
17 fees from DEFENDANT, PLAINTIFFS, or any CLASS MEMBER. Any fee and
18 expense application, any fee and expense award, and any and all matters related thereto,
19 is not to be considered an integrated part of the settlement, and is to be considered by the
20 COURT separately from the COURT's consideration of the fairness, reasonableness, and
21 adequacy of the settlement, and will not operate to terminate or cancel this
22 AGREEMENT, and will not affect or delay the finality of the FINAL ORDER.

1 39. Any CLASS MEMBER or other person may be represented by counsel of his or her
2 choice, but all fees and expenses of such counsel, if other than CLASS COUNSEL, will
3 be paid by the CLASS MEMBER or other person.

4 40. The PARTIES agree to jointly petition the COURT for an order granting final approval
5 of this settlement and entering final judgment in the ACTION, substantially in the form
6 attached hereto as Exhibit A.

7 41. The obligation of the PARTIES to support the settlement is expressly conditioned upon
8 the COURT's entry of the FINAL APPROVAL ORDER and that such obligations are for
9 purposes of this AGREEMENT only. If the PARTIES' application for the FINAL
10 APPROVAL ORDER is denied either by the COURT or after all appeals are exhausted,
11 such support is without prejudice to any status quo ante claims, defenses, rights, or
12 positions in this ACTION. Furthermore, if any of the following enumerated events occur,
13 the FINAL APPROVAL ORDER including, but not limited to, certification of the
14 CLASS and all findings of fact and conclusions of law in the FINAL APPROVAL
15 ORDER shall be automatically dissolved without further order of the COURT, null and
16 void and of no force and effect, and, as of earliest date on which a PARTY signed this
17 AGREEMENT, all status quo ante rights of PLAINTIFFS, DEFENDANT and the
18 CLASS MEMBERS to, among other things, pursue or oppose any effort to certify this
19 action or any other subsequently filed or reinstated class action litigation as a class action,
20 and all other claims, defenses, rights, and positions shall in all respects be unaffected, and
21 the FINAL APPROVAL ORDER shall so provide:

22 a. this AGREEMENT is not approved by the COURT,
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b. approval of this AGREEMENT, including the entry of the FINAL APPROVAL ORDER, is reversed or modified on appeal in a manner materially inconsistent with this AGREEMENT (except for the modification of any attorney's fee award), or

c. any one of the conditions set forth in ARTICLE V of this AGREEMENT is not met.

42. No later than the EFFECTIVE DATE, DEFENDANT will deliver to CLASS COUNSEL payment of the *cy pres* award, the payment to PLAINTIFFS, and the awarded attorney's fees and expenses, to the order of "Philip D. Stern Attorney Trust Account." CLASS COUNSEL will promptly deposit those funds into that attorney trust account. Upon delivery of such funds, DEFENDANT shall have fulfilled all financial obligations under the FINAL APPROVAL ORDER. Within seven days after the payment clears the Philip D. Stern Attorney Trust Account, CLASS COUNSEL will distribute the funds in accordance with the FINAL APPROVAL ORDER. CLASS COUNSEL will send a copy of the transmittal letter distributing the *cy pres* award to DEFENDANT's counsel.

ARTICLE IV. RELEASES.

43. The CLASS MEMBERS shall retain the right to bring individual actions for actual and/or statutory damages under the FDCPA or any other comparable federal or state law based upon having received a telephonic voicemail message (automated or otherwise) from DEFENDANT during the CLASS PERIOD, in connection with an attempt to collect a debt, in which the message allegedly failed to identify DEFENDANT as the caller, to state the purpose or nature of the call, to disclose that the call was from a debt collector, or to otherwise comply with Sections 1692d(6) and/or 1692e(11) of the FDCPA;

1 provided, however, that the CLASS MEMBERS shall be barred and enjoined from
2 bringing, maintaining, prosecuting, continuing or asserting such a claim under either
3 federal or state law through a class action or any other kind of mass action procedural
4 device.

- 5 44. As of the date this AGREEMENT is signed by the PLAINTIFFS, their assigns, heirs,
6 predecessors, successors, subsidiaries, affiliates, officers, directors, partners, members,
7 principals, employees, agents, attorneys and personal representatives, or any other
8 person, company or entity asserting an interest by or through them, do hereby release and
9 forever discharge the DEFENDANT of and from all causes of action, suits, claims and
10 demands of every nature and description whatsoever, actual or potential, asserted or
11 unasserted, known or unknown, suspected or unsuspected, foreseen or unforeseen,
12 whether in law or in equity, whether based on federal, state, local, statutory or common
13 law or any other law, rule or regulation, relating to or arising out of the claims asserted or
14 which could have been asserted in the ACTION. This Release constitutes a waiver of
15 Section 1542 of the California Civil Code (and any similar or comparable provisions,
16 rights and benefits conferred by the law of any state or territory of the United States or
17 any other jurisdiction, and any principle of common law or equity), which provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
19 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
20 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
21 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

22 PLAINTIFFS understand and acknowledge the significance of these waivers of
23 California Civil Code Section 1542 and/or of any other applicable law relating to
24 limitations on releases. In connection with such waivers and relinquishment,

1 PLAINTIFFS acknowledge that they are aware that they may hereafter discover facts
2 other than, in addition to, or different from, those facts which they now know or believe
3 to be true with respect to the subject matter of the ACTION or the settlement, and that
4 they fully, finally and forever release and discharge their claims and, in furtherance of
5 such intention, the release will remain in effect notwithstanding the discovery or
6 existence of any such other, additional or different facts.

7 **ARTICLE V. REPRESENTATIONS AND WARRANTIES.**

8 45. CLASS COUNSEL represent and warrant that they believe the settlement set forth in this
9 AGREEMENT is in the best interest of the SETTLEMENT CLASS. However, such
10 representations do not constitute the giving of legal advice to DEFENDANT which
11 stipulates that it is relying on the legal advice of its own attorneys in deciding whether to
12 enter into this settlement.

13 46. PLAINTIFFS represent and warrant as follows:

14 a. that on the date of execution of this AGREEMENT they are the owners of
15 the individual claims asserted in the ACTION, they have not assigned, pledged (except to
16 the extent that their attorney may have a lien), sold or otherwise transferred such claims
17 (or an interest in such claims), and that on the EFFECTIVE DATE, they will own such
18 claims free and clear of any and all liens, claims, charges, security interests or other
19 encumbrances of any nature whatsoever, except for any contingent legal fees and
20 expenses; and

21 b. that this AGREEMENT does not constitute an admission by
22 DEFENDANT that any claim or fact alleged by any party in the ACTION or any other
23 action is true or correct, and DEFENDANT has always and consistently expressly denied
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1 any liability or wrongdoing whatsoever in connection with matters which are the subject
2 of this or any other action.

- 3 47. DEFENDANT represents and warrants that the information supplied to CLASS
4 COUNSEL concerning class size, net worth and DEFENDANT's current practices
5 regarding telephone messages left in connection with the collection of debts is true and
6 accurate and based on a reasonably diligent investigation and review of DEFENDANT's
7 books, records and written policies.

8 **ARTICLE V. CONDITIONS TO SETTLEMENT.**

- 9 48. This AGREEMENT is subject to:

- 10 a. the accuracy of the representations and warranties contained in this
11 AGREEMENT;
12 b. the performance by the PARTIES of their obligations under this
13 AGREEMENT in all material respects;
14 c. the COURT's certification that this ACTION may proceed as a class
15 action pursuant to Fed. R. Civ. P. 23(b)(2); and
16 d. the COURT's approval of this AGREEMENT as fair, adequate and
17 reasonable.

18 **ARTICLE VI. MISCELLANEOUS PROVISIONS.**

- 19 49. If an appeal is taken by a CLASS MEMBER or any other person from the FINAL
20 APPROVAL ORDER, PLAINTIFFS and DEFENDANT agree to support the position on
21 such appeal that the FINAL APPROVAL ORDER should be affirmed in its entirety, and
22 to file briefs or other appropriate court papers in support of that position. Nothing
23 contained herein, however, shall prejudice the rights of PLAINTIFFS, CLASS
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1 COUNSEL, or DEFENDANT to appeal from any order of the COURT that is
2 inconsistent with the order contemplated by this AGREEMENT.

3 50. This AGREEMENT shall be terminable by PLAINTIFFS or DEFENDANT upon five
4 days' prior written notice to the other if any of the terms, conditions, or representations of
5 this AGREEMENT are not adhered to by the COURT.

6 51. The PARTIES and their attorneys stipulate that this AGREEMENT is a compromise of
7 disputed claims, and that this AGREEMENT is entered into without DEFENDANT
8 admitting any liability, which liability is expressly denied. The PARTIES and their
9 attorneys further stipulate that nothing contained in this AGREEMENT, the supporting
10 documents, or the negotiations leading up to this AGREEMENT are to be construed as an
11 admission of liability or wrongdoing of any kind, or – if this AGREEMENT is terminated
12 – as a waiver of any claim or defense that DEFENDANT or PLAINTIFFS may have in
13 the ACTION, nor of PLAINTIFFS' right to seek class certification on a contested basis,
14 nor of DEFENDANT's right to oppose such certification.

15 52. This AGREEMENT is the entire agreement of the PARTIES. All antecedent or
16 contemporaneous extrinsic representations, warranties, or collateral provisions
17 concerning the negotiation and preparation of this AGREEMENT are intended to be
18 discharged and nullified.

19 53. No modification of this AGREEMENT may be made, except by written agreement
20 executed by PLAINTIFFS, CLASS COUNSEL, and DEFENDANT, and approved by the
21 COURT.

- 1 54. The PLAINTIFFS and DEFENDANT shall be deemed to have drafted this
2 AGREEMENT equally, and the settlement documents shall not be construed strictly
3 against PLAINTIFFS or DEFENDANT.
- 4 55. All notices between and to CLASS COUNSEL and DEFENDANT required under this
5 AGREEMENT shall be sent by first class U.S. mail, by any method for which there is a
6 signed receipt obtained from the recipient by a carrier in the business of delivering
7 documents (such as the U.S. Post Office, Federal Express and United Parcel Service), or
8 by hand delivery to the recipient designated in this AGREEMENT, with a courtesy copy
9 sent by email. The timeliness of all submissions and notices shall be measured by the date
10 that is either three BUSINESS DAYS after the date of the postmark (if sent by mail) or
11 by the date of receipt (if hand delivered or there is a signed receipt), regardless when or
12 whether the copy sent via email is received. The persons designated to receive notice are
13 as follows:

14 PHILIP D. STERN, ESQ.
15 Philip D. Stern & Associates LLC
16 697 Valley Street, Suite 2D
17 Maplewood, NJ 07040
18 (973) 379-7500
19 pstern@philipstern.com
20 Attorney for PLAINTIFFS

21 and:

22 DAVID L. HARTSELL, ESQ.
23 McGuireWoods LLP
24 77 West Wacker Dr., Ste. 4100
25 Chicago, Illinois 60601
(312) 849-8100
dhartsell@mcguirewoods.com
Attorney for DEFENDANT

1 56. This AGREEMENT shall be governed by and shall be construed and enforced in
2 accordance with the laws of the United States and the State of California without regard
3 to any conflict of law provision that might otherwise require the application of the laws
4 of a jurisdiction other than the State of California to the performance, validity,
5 construction, or enforcement of this AGREEMENT.

6 57. Article and Paragraph headings in this AGREEMENT are for convenience of reference
7 only and are not to be taken to be a part of the provisions of this AGREEMENT, nor to
8 control or affect meanings, constructions or the effect of the same.

9 58. The AGREEMENT is binding upon and inures to the benefit of the PARTIES.

10 59. All signatories to this AGREEMENT and their counsel shall exercise their best efforts to
11 take all steps and expend all efforts that may become necessary to effectuate this
12 AGREEMENT.

13 60. This AGREEMENT may be executed in any number of counterparts and each of which
14 when so executed shall be deemed an original and all of which taken together shall
15 constitute one and the same AGREEMENT. Facsimile signatures will be deemed
16 originals.

17 SIGNATURE PAGE

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19
20 MICHAEL P. KOBY
Dated: January ____, 2013

21
22 MICHAEL SIMMONS
Dated: January ____, 2013

ARS NATIONAL SERVICES, INC.



By: DANIEL L. MONTEJARO VICE PRESIDENT
(PRINT NAME AND TITLE BELOW
SIGNATURE)
Dated: January 30, 2013

1 56. This AGREEMENT shall be governed by and shall be construed and enforced in
2 accordance with the laws of the United States and the State of California without regard
3 to any conflict of law provision that might otherwise require the application of the laws
4 of a jurisdiction other than the State of California to the performance, validity,
5 construction, or enforcement of this AGREEMENT.

6 57. Article and Paragraph headings in this AGREEMENT are for convenience of reference
7 only and are not to be taken to be a part of the provisions of this AGREEMENT, nor to
8 control or affect meanings, constructions or the effect of the same.

9 58. The AGREEMENT is binding upon and inures to the benefit of the PARTIES.

10 59. All signatories to this AGREEMENT and their counsel shall exercise their best efforts to
11 take all steps and expend all efforts that may become necessary to effectuate this
12 AGREEMENT.

13 60. This AGREEMENT may be executed in any number of counterparts and each of which
14 when so executed shall be deemed an original and all of which taken together shall
15 constitute one and the same AGREEMENT. Facsimile signatures will be deemed
16 originals.

17 SIGNATURE PAGE

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19
20 MICHAEL P. KOBY
Dated: January 31, 2013

ARS NATIONAL SERVICES, INC.

21
22 MICHAEL SIMMONS
23 Dated: January ____, 2013

By: _____
(PRINT NAME AND TITLE BELOW
SIGNATURE)
Dated: January ____, 2013

- 1 56. This AGREEMENT shall be governed by and shall be construed and enforced in
2 accordance with the laws of the United States and the State of California without regard
3 to any conflict of law provision that might otherwise require the application of the laws
4 of a jurisdiction other than the State of California to the performance, validity,
5 construction, or enforcement of this AGREEMENT.
- 6 57. Article and Paragraph headings in this AGREEMENT are for convenience of reference
7 only and are not to be taken to be a part of the provisions of this AGREEMENT, nor to
8 control or affect meanings, constructions or the effect of the same.
- 9 58. The AGREEMENT is binding upon and inures to the benefit of the PARTIES.
- 10 59. All signatories to this AGREEMENT and their counsel shall exercise their best efforts to
11 take all steps and expend all efforts that may become necessary to effectuate this
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19
20 MICHAEL P. KOBY
Dated: January __, 2013

ARS NATIONAL SERVICES, INC.

21
22 
MICHAEL SIMMONS

By: _____
(PRINT NAME AND TITLE BELOW
SIGNATURE)

23 Dated: January 30, 2013

Dated: January __, 2013

1
2 JONATHAN W. SUPLER

3 Dated: January ____, 2013

4 Attorneys for PLAINTIFFS:

5 By:  FOR

6 PHILIP D. STERN

7 Philip D. Stern & Associates, LLC

8 697 Valley Street, Suite 2d

9 Maplewood, NJ 07040

10 Dated: January 30th, 2013

11 45374267_1.DOCX

12 Attorneys for DEFENDANT:

13 By: 

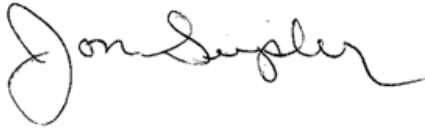
14 DAVID L. HARTSELL

15 McGuire Woods LLP

16 77 West Wacker Dr., Ste. 4100

17 Chicago, IL 60601


18 Dated: January 30, 2013

1 

2 JONATHAN W. SUPLER

3 Dated: ~~January XXXX, XXXX~~ February 7, 2013

4 Attorneys for PLAINTIFFS:

5 By:  FOR

6 PHILIP D. STERN

7 Philip D. Stern & Associates, LLC

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14 DAVID L. HARTSELL

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17 Chicago, IL 60601

18 Dated: January 30, 2013

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL P. KOBY, an individual;
MICHAEL SIMMONS, an individual;
JONATHAN W. SUPLER, an individual; on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

ARS NATIONAL SERVICES, INC., a
California Corporation; and JOHN AND JANE
DOES 1 through 25 inclusive,

Defendants.

Case 3:09-cv-00780-KSC

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

12 This matter coming before the Court on the parties' Motion for Final Approval of the
13 Proposed Class Action Settlement Agreement and the entry of Judgment thereon, all parties
14 present and having been heard, and the Court being fully advised in the premises,

15 IT IS ORDERED, ADJUDGED AND DECREED:

- 16 1. The Court hereby certifies, pursuant to Fed.R.Civ.P. 23(b)(2), a "SETTLEMENT
17 CLASS" of all natural persons in the United States who received a telephonic voicemail
18 message (automated or otherwise) from DEFENDANT in connection with an attempt to
19 collect a debt, in which the message allegedly failed to identify DEFENDANT as the
20 caller, to state the purpose or nature of the call, or to disclose that the call was from a debt
21 collector, during the period April 15, 2008 (one year prior to the filing of this lawsuit)
22 through August 19, 2011 (when DEFENDANT adopted a standardized uniform message
23 for calls made to consumers). DEFENDANT estimates (and PLAINTIFFS do not
24 dispute) that the class size is in excess of 4 million persons. Excluded from the

1 SETTLEMENT CLASS are all officers, members, partners, managers, directors, and
2 employees of DEFENDANT and their respective immediate families, and legal counsel
3 for all parties to this ACTION and all members of their immediate families.

4 2. The "CLASS CLAIMS" are defined as any and all claims and causes of action arising
5 under the FDCPA or any other federal or state law based upon DEFENDANT's failure,
6 when leaving a telephonic voicemail message (automated or otherwise) in connection
7 with an attempt to collect a debt, to identify DEFENDANT as the caller, to state the
8 purpose or nature of the call, to disclose that the call was from a debt collector, or to
9 otherwise comply with Sections 1692d(6) and/or 1692e(11) of the FDCPA, during the
10 period April 15, 2008 (one year prior to the filing of this lawsuit) through August 19,
11 2011 (when DEFENDANT adopted a standardized uniform message for calls made to
12 consumers). Based on the foregoing definition, CLASS CLAIMS do not include claims
13 arising under the Telecommunications Consumer Protection Act, 47 U.S.C. 227

14 3. The Court appoints Philip D. Stern, Esq. of Philip D. Stern & Associates, LLC and
15 Robert E. Schroth, Jr., Esq. of Schroth & Schroth as CLASS COUNSEL and finds that
16 they will fairly and adequately represent the interests of the SETTLEMENT CLASS.

17 4. The Court appoints Michael Koby, Michael Simmons, and Jonathan Supler
18 ("PLAINTIFFS") as the class representatives and finds that they will fairly and
19 adequately represent the interests of the SETTLEMENT CLASS.

20 5. The Court finds that the applicable requirements of the Class Action Fairness Act have
21 been met.

22 6. The Court finds that the SETTLEMENT is fair, adequate and reasonable to the
23 SETTLEMENT CLASS.

7. The Court finds that the SETTLEMENT should be, and is, approved.

8. Pursuant to the terms of the SETTLEMENT, DEFENDANT shall pay the sum of \$35,000 (Thirty Five Thousand Dollars) as a cy pres award to the following organization(s): _____.

9. Pursuant to the terms of the SETTLEMENT, DEFENDANT shall pay \$1000 (One Thousand Dollars) to each of the PLAINTIFFS (for a total of \$3000).

10. Pursuant to the terms of the SETTLEMENT, DEFENDANT shall pay to CLASS COUNSEL attorney's fees and costs in the amount of \$67,500 (Sixty-seven Thousand and Five Hundred Dollars).

11. The Court hereby enters an injunction (“STIPULATED INJUNCTION”), to expire on its own terms no later than two years from the date of the FINAL APPROVAL ORDER and JUDGMENT, whereby DEFENDANT shall utilize a voicemail message for all consumer calls (automated and otherwise) identical or substantially similar to that attached here as Exhibit A; provided, however, that DEFENDANT may seek to dissolve the STIPULATED INJUNCTION at any time if there is a change in the law or circumstances otherwise present a basis for doing so. Further, DEFENDANT does not waive and reserves the right to invoke the FDCPA’s *bona fide* error defense in response to any claim alleging that DEFENDANT left a non-compliant message during the time the STIPULATED INJUNCTION remains in effect.

12. Nothing in this FINAL APPROVAL ORDER affects the right, if any, of each CLASS MEMBER to assert, maintain or litigate any individual claim for actual and/or statutory damages, attorney's fees, and costs under the FDCPA or any other comparable federal or state law based upon having received a telephonic voicemail message (automated or

1 otherwise) from DEFENDANT during the CLASS PERIOD, in connection with an
2 attempt to collect a debt, in which the message allegedly failed to identify DEFENDANT
3 as the caller, to state the purpose or nature of the call, to disclose that the call was from a
4 debt collector, or to otherwise comply with Sections 1692d(6) and/or 1692e(11) of the
5 FDCPA; provided, however, that the CLASS MEMBERS shall be barred and enjoined
6 from bringing, maintaining, prosecuting, continuing or asserting such a claim under either
7 federal or state law through a class action or any other kind of mass action procedural
8 device. DEFENDANT agrees that in the event it seeks to assert this bar against any
9 CLASS MEMBER, it shall first give notice to CLASS COUNSEL and, further, shall not
10 seek sanctions against or to hold the CLASS MEMBER or the CLASS MEMBER's
11 attorney in contempt based on the injunction described in this Paragraph; however,
12 nothing in this Paragraph shall be construed as prohibiting DEFENDANT from seeking
13 any relief, including an adjudication of contempt or sanctions, for any other reason.

14 13. The Court finds that notice to CLASS MEMBERS is not required under Fed.R.Civ.P.
15 23(b)(2) because: (1) the relief being obtained is primarily injunctive rather than
16 monetary; (2) the cost of notice would be excessive (based on the estimated size of the
17 class) and the per-class member recovery *de minimus* (given the FDCPA's one-percent of
18 net worth cap on class statutory damages); and (3) the CLASS MEMBERS retain the
19 ability to bring individual claims for actual and/or statutory damages, attorney's fees, and
20 costs and, thus, are not releasing any substantive or property right.

21 14. The PLAINTIFF's individual claims are hereby dismissed with prejudice.
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15. The Court retains jurisdiction of all matters relating to enforcement of this FINAL APPROVAL ORDER AND JUDGMENT and all other matters relating to the SETTLEMENT.

Dated: January ____, 2013

Honorable Karen S. Crawford
United States Magistrate Judge
United States District Court
for the Southern District of California

45420112_1

ARS Customer Voicemail Message Script

This message is for (Customer First/Last Name). If you are not (Customer First/Last Name), please stop listening to this message. If you are (Customer First/Last Name), only listen to the following information in private. There will now be a pause.

(Pause for 3 seconds)

This is (AR First/Last Name) from ARS National Services, a debt collector, with an attempt to collect a debt. Any information obtained will be used for that purpose. Please call me at (800) 456-5053, Ext XXXX and reference #XXXXXXXX. Thank you.

"B"

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Attorneys for Plaintiffs Michael P. Koby, an individual; Michael Simmons, an individual; Jonathan W. Supler, an individual; and on behalf of themselves and all others similarly situated:

Robert E Schroth , Jr
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Email: robschrothesq@sbcglobal.net

/s/ Susan L. Germaise
Susan L. Germaise